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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
San Isabel Telecom, Inc.)
Petition for Waiver of Sections 20.18(e))
of the Commission's Rules)

CC Docket No. 94-102**To: Chief, Wireless Telecommunications Bureau****PETITION FOR WAIVER**

San Isabel Telecom, Inc. ("San Isabel"), by its attorneys, and pursuant to Section 1.3 and 1.925 of the Commission's Rules,¹ hereby requests waiver of the Phase II enhanced 911 ("E911") obligations set forth in Section 20.18 of the Commission's Rules.² Waiver is warranted due to the fact that the underlying purpose of the Rule would be frustrated by application to San Isabel and grant of the waiver would be in the public interest. To further the public interest, San Isabel proposes a specific deployment schedule based upon representations made by handset-based solution vendors.

I. Background

San Isabel is the licensee of a partitioned PCS E Block license, consisting of rural and

1 47 C.F.R. §§ 1.3 and 1.925.

2 47 C.F.R. § 20.18. A facsimile copy of a Declaration by an authorized company representative attesting to the accuracy of this petition is attached. A supplemental filing will be made after the original has been received.

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small communities within the Denver BTA.³ San Isabel currently provides service utilizing Quest Wireless' CDMA switch and its own base stations and repeaters. The company plans to initiate service using its own switch on November 15, 2001. The switch will be a Lucent CDMA switch.

II. Waiver is Warranted

The standard for grant of a waiver of the Commission's Rules is that "the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest."⁴ San Isabel's waiver request meets these standards.

A. The Underlying Purpose of the Commission's E911 Rule Would be Frustrated by Application to the Instant Case

To require San Isabel to meet the October 1, 2001 Phase II E911 deadline would frustrate the underlying purpose of the FCC's E911 Rules by jeopardizing the provision of service through imposition of financially burdensome and technically infeasible requirements. The FCC adopted its E911 Rules with the goal of "stimulat[ing] the application of wireless technology to improv[e] emergency 911 systems."⁵ The Commission recognized that this goal could not be accomplished without "research, testing and development requiring coordinated efforts by public safety organizations, wireless carriers, location technology vendors and

³ Call Sign WPOI241.

⁴ 47 C.F.R. § 1.925(b)(3)(i).

⁵ *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 (2000) ("Fourth MO&O").

equipment manufacturers.”⁶ Due to concerns expressed by the carriers, vendors and manufacturers regarding the technical and financial feasibility of implementing E911 services, the FCC adopted a phased-in approach that is “rigorous without being impossible or commercially self-defeating.”⁷ Further, the Commission provided for waivers of its Rule in situations in which it is not economically or technologically feasible for a carrier to meet the phased-in deployment timetable.⁸

1. Imposition of a Network-Based E911 Phase II Solution is Not Technically or Financially Feasible for San Isabel

To date, San Isabel has not received a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP’s costs. Accordingly, San Isabel is not currently required to provide a network-based Phase II E911 solution. However, because handset-based technologies will not be available for CDMA systems (see discussion below), San Isabel has investigated utilizing a network-based solution in the event a request is made.

⁶ *Id.*

⁷ *In the Matter of Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18707 (1996) (“R&O”). See *Notice of Proposed Rulemaking* 9 FCC Rcd 6170, 6178 (1994) (FCC proposed a phased-in approach due to concerns about “technical and financial feasibility expressed by manufacturers and communications service providers”).

⁸ See, e.g., R&O at 18718 (noting that there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible within the timetable allowed and stating that these cases can be dealt with through individual waivers); *U.S. Cellular, et.al. v. FCC*, Case No. 00-1072, D.C. Cir., FCC Brief at 33 (“If a small or rural carrier can show that, in fact, it is uniquely disadvantaged by the technological or economic demands imposed on it by the FCC’s E911 implementation schedule, the waiver procedure is available for it to seek appropriate individualized relief”).

This investigation has revealed that network-based solutions are not technically feasible because San Isabel does not currently control the switch facilities utilized to provide service. In anticipation of the Commission's E911 Phase II deadline, San Isabel made attempts to coordinate with its current switch provider, Quest Wireless, regarding the implementation of Phase II E911 services. However, Quest Wireless has yet to respond to San Isabel's inquiries regarding implementation. Further, San Isabel's deployment of its own switch will not lead to a reasonable implementation of a network-based solution. Without the ability to spread the high costs of a network-based solution over a large subscriber base, the cost of deploying a network-based solution would in any event, be prohibitively expensive.⁹ Accordingly, a network-based solution is neither technically nor financially feasible.

2. Imposition of the Commission's Implementation Schedule for a Handset-Based Solution is Not Technically Feasible for San Isabel

To require San Isabel to sell ALI-capable handsets to new customers according to the FCC's timetable would frustrate the FCC's goal that the imposition of E911 requirements be technically feasible. San Isabel has not been able to identify any location technology vendors or equipment manufacturers that currently produce ALI-capable phones for CDMA systems. Accordingly, San Isabel cannot meet the FCC's handset-based implementation schedule.

⁹ See, e.g., the Phase II Implementation Report for North Carolina RSA 3 Cellular Telephone Company, Inc. dba Carolina West Wireless filed November 9, 2000 containing information regarding Grayson Wireless' network-based solution and estimating that the cost of deployment of Grayson's solution is estimated to be approximately \$25,000 per cell site plus a \$65,000 central control system. The Commission has previously cited United States Cellular Corporation's estimate that it would cost about \$90 million to upgrade its more than 2,500 cell sites to employ TruePosition's network-based solution, *i.e.*, approximately \$36,000 per cell site.

According to Alltel's Waiver Request, none of the major handset manufacturers will have GPS-capable handsets available for commercial availability until 2002.¹⁰ Samsung has indicated that it will manufacture GPS-capable handsets in the near future; however, it requires a minimum order of 5000, an amount far in excess of San Isabel's projected new activations.

B. Waiver Would be in the Public Interest

San Isabel is not requesting a blanket waiver of the Commission's E911 Phase II requirements but rather requests waiver only to the extent that these requirements cannot be accomplished in a technically or economically feasible way. Accordingly, San Isabel seeks an extension of the deadline to allow it to implement a handset solution in the most efficient and expeditious manner.

Based upon the representations made by manufacturers in Alltel's Waiver Request, San Isabel seeks a waiver for a nine-month deferral of each of the penetration benchmarks in Section 20.18(g)(1)(i)-(iv).¹¹ San Isabel does not seek relief from the requirement that by December 31, 2005, carriers must reach 95% penetration of ALI-capable handsets in their total subscriber bases. Such an extension would allow time for manufacturers to complete development and fully

¹⁰ See Alltel Communications Petition for Waiver of Sections 20.18(e) and (g) of the Commission's Rules filed July 25, 2001 at 17 ("Alltel's Waiver Request") at 14 noting that the following manufacturers will have GPS-capable handsets available for commercial availability as of the respective dates: Audiovox - January 2002; Kyocera - June 2002; Motorola - September 2002; Nokia - December 2002.

¹¹ See, e.g., Alltel's Waiver Request at 22. FCC rules require carriers that choose handset-based solutions to meet the following implementation schedule: October 1, 2001 - Carriers must begin selling and activating ALI-capable handsets; December 31, 2001 - Carriers must ensure that at least 25% of all new handsets activated are ALI-capable; June 30, 2002 - Carriers must ensure that at least 50% of all new handsets activated are ALI-capable; December 31, 2002 - Carriers must ensure that at least 100% of all new digital handsets activated are ALI-capable.


test handset solutions for CDMA systems. To begin selling and activating the phones on a shorter timetable would be a disservice to the public interest as phones that had not been properly tested would be sold to consumers as soon as the manufacturers make them available in order to meet Commission-imposed deadlines.

III. Conclusion

Because implementation of the FCC's E911 Phase II implementation requirements are neither technically nor financially feasible, San Isabel requests a waiver of the requirements. The requested waiver would allow for a nine-month deferral of each of the penetration benchmarks required for carriers that choose handset-based solutions. Such a waiver would be in the public interest as it would allow time for manufacturers of CDMA handsets to fully develop the solutions and test the phones before they are sold to San Isabel subscribers.

Respectfully submitted,

SAN ISABEL TELECOM, INC.

By: 
Sylvia Lesse
John Kuykendall

Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037
(202) 296-8890

October 1, 2001

DECLARATION OF DOUGLAS WAGNER

I, Douglas Wagner, President of San Isabel Telecom, Inc., do hereby declare under penalty of perjury that I have read the foregoing Petition for Waiver and that the facts stated therein are true and correct, to the best of my knowledge, information and belief



Douglas Wagner

Dated: October 1, 2001

CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition For Waiver" was served on this 1st day of October 2001, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:


Ann Tait

Blaise Scinto
Deputy Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Qualex International
445 - 12th Street, SW
Room CY B402
Washington, DC 20554

Kris Monteith
Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

James Schlichting
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554